Advisory Committee on Appellate Rules
October 29, 2019

The meeting was called to order by Justice Palmer at 10 a.m. in the Attorney Conference Room of the Supreme Court.

Members in attendance:
Justice Richard N. Palmer, Co-Chair
Chief Judge Alexandra D. DiPentima, Co-Chair
Attorney Jeffrey Babbin
Attorney Colleen Barnett
Attorney Jill Begemann
Attorney Kathryn Calibey
Attorney John DeMeo
Attorney Richard Emanuel
Attorney Paul Hartan
Attorney Wesley Horton
Hon. Sheila Huddleston
Attorney Clare Kindall
Attorney Eric Levine
Attorney Bruce Lockwood
Attorney Jamie Porter
Attorney Charles Ray
Attorney Lauren Weisfeld
Attorney Carolyn Ziogas

Members not in attendance:
Attorney Daniel J. Krisch
Attorney Giovanna Weller

Additional attendees:
Attorney Jean Kelly Cummings
Attorney David Goshdigian

Preliminary matters

Chief Judge DiPentima and Attorney Begemann explained that most of the proposals adopted at this meeting would be combined with the proposals adopted at the anticipated spring, 2020 meeting. Following a public hearing, such proposals would be considered by the Judges and Justices for adoption with an expected effective date of January 1, 2021.

I. OLD BUSINESS

A. Approval of minutes of April 18, 2019.

Attorney Horton moved to approve the minutes. Attorney Babbin seconded. The minutes were approved unanimously.

B. Proposal to amend § 63-4 to require, in cases in which there is a firm appearance, that counsel include a list of all attorneys who materially participated in the case and § 67-7 to require amicus counsel to provide a list of all attorneys who materially participated in the brief.

Justice Palmer indicated that he would convey to Justice McDonald that there was a strong sentiment from the bar that the proposals were not feasible. No action was taken on the proposals, and this item could be removed from future agendas.

C. Proposal to amend the child protection rules to change the word "juvenile" to "child protection" and to delete the word "youth."

Attorneys Cummings and Begemann presented this proposal. Following the April 24, 2019 meeting, this proposal was marked over to this meeting and a revised proposal was circulated for consideration of whether to delete the word "youth" consistent with a recent statutory amendment and amendments to the Superior Court rules adopted effective January, 2020.

Attorney Kindall moved to adopt the proposal. Attorney Horton seconded. The proposed amendments were approved unanimously.

D. Whether to amend § 62-9 (d) (3) pursuant to *State* v. *Mendez*, 185 Conn. App. 476, 485, n.6 (2018) (*Prescott, J.*, concurring).

The proposal requires counsel to inform his or her former client that if the former client wishes to challenge the trial court's decision allowing counsel to withdraw, the former client must file a motion for review with the Appellate Court in accordance with § 66-6. Attorney Weisfeld reported that her office had no objection to the proposal as drafted. Attorney Hartan explained that, in addition to the proposal, Superior Court operations is working to ensure that the notice of the trial court's order granting the attorney's request to withdraw would include that information going forward. It is anticipated that the change to the notice would take effect in December, 2019.

Attorney Horton moved to adopt the proposal. Attorney Lockwood seconded. The proposed amendment was approved unanimously.

II. NEW BUSINESS

A. Whether to amend § 67-10 concerning copies of supplemental authorities.

Attorney Horton explained this proposal, which he submitted along with Attorney Ken Bartschi. It was agreed that unpublished, advance released opinions of the Connecticut Supreme and Appellate Courts and slip opinions of the U.S. Supreme Court that were available on the Internet need not accompany the § 67-10 notice of supplemental authority. Members of the committee discussed expanding the proposal to include any unpublished material available on Westlaw or Lexis, but Justice Palmer and Chief Judge DiPentima indicated that an expansion of the proposal would not be convenient or helpful to the courts. No changes to the proposal were made.

Attorney Horton moved to adopt the proposal. Attorney Babbin seconded. The proposed amendment was approved unanimously.

B. Whether to amend §§ 63-3 and 63-4 regarding the time for filing and the information to be included on the docketing statement.

Attorney Ziogas explained that the appellate clerk has an obligation under federal law to safeguard information concerning applications for protective orders and a competing obligation to make information concerning pending appeals available to the public. Although the committee considered two proposals, the committee focused on the proposal that would require the appellant, at the time of filing the appeal, to indicate whether a criminal protective order, civil protective order, or civil restraining order was requested or issued during any of the underlying proceedings. That proposal, as drafted, required that information to be included with the docketing statement, which would be filed with the appeal. This would better enable the appellate clerk to ensure that protected information is not published on the Internet.

Members of the committee discussed potential alternative proposals that would require appellants to inform the appellate clerk about such protective orders, but would still allow the docketing statement to be filed with the rest of the § 63-4 papers 10 days after the appeal is filed. There was a consensus that it was important to get information concerning protective orders to the appellate clerk as soon as possible in the appeal process and that, like a docketing statement, the appellant should be able to amend any statement concerning the existence of a protective order as of right at any time.

The proposal was tabled, and it was agreed that due to the necessity of this change, an amended proposal drafted by the work group may be circulated to the committee via e-mail

before the next meeting. Any amended proposal will be addressed in the minutes of the next meeting.

C. Whether to amend § 61-9 regarding amended appeals.

Attorney Porter presented this proposal, which makes minor changes to the rule to clarify that when an appeal is pending, a subsequent appeal may not necessarily be treated as an amended appeal, especially when there are multiple amended appeals in a case. Moreover, if there are multiple amended appeals, any amended appeal that was taken from a final judgment would survive the dismissal of the original appeal or any other amended appeal.

Attorney Horton moved to adopt the proposal. Attorney Porter seconded. The proposed amendment was approved unanimously.

D. Whether to amend § 66-1 concerning extensions of time so that it is consistent with § 61-14.

Attorney Horton suggested that § 61-14 was confusing and that, as an alternative to the proposal, § 61-14 should be amended to use language consistent with § 61-11 (e) to make it clear that motions for an extension of time should be filed in the trial court only when there is no appeal pending. Attorney Porter explained that she believed that the language was included in the second paragraph of § 61-14 because it was the feeling from the trial court judges that the trial court may be in the best position to determine whether the appellant should get an extension of time to file a motion for review of an order concerning an appellate stay. Query whether such motions for an extension of time should be filed with the appellate clerk and forwarded to the trial court when an appeal is pending.

It was agreed that this proposal should be tabled and referred to the work group for further consideration.

E. Whether to add proposed rule § 81-3A regarding the granting or denial of certification.

Chief Judge DiPentima explained that the legislature amended General Statutes § 8-8 to require that three, and not two, judges of the Appellate Court grant a petition for certification to appeal in zoning cases. This proposed new rule is consistent with that statute as amended.

Attorney Horton moved to adopt the proposal. Attorney Porter seconded. The proposed amendment was approved unanimously.

F. Discussion—Whether to amend § 84-5 regarding the form of petitions for certification.

Justice Palmer and Attorney Hartan explained that the Supreme Court has indicated an openness to changing some of these requirements in order to allow advocates to get key information up front in the petition. This issue also has been discussed by the Appellate Advocacy Section of the Connecticut Bar Association. Attorney Babbin indicated that the Section is considering putting forth a proposal. Discussion was tabled for future consideration of a proposal, if any, offered by the Section.

G. Discussion—Whether to reduce or eliminate headnotes on Supreme and Appellate Court opinions.

Justice Palmer explained that the headnote process was resource intensive and that reducing or eliminating headnotes has been discussed. In response to a question, Attorney Levine discussed whether the courts' opinions would be released more quickly if headnotes were eliminated. He indicated that the headnote process can add a day or more to the time it takes to release any one opinion and that, of course, longer opinions require more time, but that

it was impossible to quantify how much of an impact such a change would have over a year of cases. Attorney Levine indicated that, rather than eliminating all headnotes, some headnotes could perhaps just set forth the holding of the cases without necessarily summarizing the court's reasoning. The consensus of the committee members was that headnotes in their current form are very useful to practitioners and to judges, especially on long cases, and that the prospect of losing them would not be popular.

III. ANY OTHER BUSINESS THAT MAY COME BEFORE THE COMMITTEE

Attorney Babbin noted that, should Section 67-7 be amended sometime in the future, the second sentence of the second paragraph should be moved to become the second sentence of the third paragraph so that the second paragraph refers exclusively to the application to file an amicus brief and the third paragraph discusses only the brief itself.

IV. NEXT MEETING

The date of the next meeting was left to the discretion of the co-chairs, but it was anticipated that it would be scheduled for April, 2020.

Respectfully submitted,

Colleen Barnett